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Guaranty National Insurance Co. v. Barbara J. Morris : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

GUARANTY NATIONAL INSURANCE COMPANY,	:	
Respondent,	:	CASE NO. 16207
vs.	:	
BARBARA J. MORRIS,	:	
Appellant.	:	

BRIEF OF RESPONDENT

AN APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, OF SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE G. HAL TAYLOR, PRESIDING.

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BRIEF OF RESPONDENT

NATURE OF CASE

Plaintiff insurer, who paid $2,787.61 in No-Fault benefits to defendant insured, filed this lawsuit after the insured's personal attorney refused to endorse a check in said amount for the settlement with State Farm Insurance Company, the tortfeasors' liability carrier, without first receiving a one-third contingent fee therein.

DISPOSITION IN THE LOWER COURT

The lower court granted plaintiff's Motion for Summary Judgment (R. 12-13), specifically holding the plaintiff had ". . . no obligation to the defendant. . . for attorneys' fees or costs with respect to the subrogated interests asserted by (plaintiff). . . for the no-fault payment and benefits paid to . . . (defendant)." (R. 84).

RELIEF SOUGHT ON APPEAL

Respondent seeks a ruling affirming the Judgment rendered below.

STATEMENT OF FACTS

A written stipulation of facts was filed with the lower court for the purpose of determining the summary judgment motions filed by both parties. (R. 52-81) These stipulated facts indicate that the plaintiff, Guaranty National Insurance Company, as insurer, and the defendant, Barbara J. Morris, as the insured, entered into an insurance contract which provided, among other things, for No-Fault benefits pursuant to Section 31-41-1, Utah Code Annotated (1953), as amended. (R. 52) This policy was in force on December 16, 1975, when defendant was involved in an automobile collision with a Rick Chapman, insured by State Farm. (R. 52-53)

Following this accident, plaintiff insurer paid defendant $2,787.61 in No-Fault insurance benefits. (R. 52)

On June 24, 1976, plaintiff gave written notice to State Farm of its claim for reimbursement of the No-Fault benefits paid defendant. (R. 53, 74) On November 9, 1976, plaintiff was advised by State Farm that defendant had obtained the services of an attorney and that the reimbursement request could not be honored until the liability claim had been resolved. (R. 53, 75) On February 22, 1977, State Farm advised plaintiff of the name of defendant's attorney and that negotiations were still pending. (R. 53, 76) On December 22, 1977, defendant executed a release and settled with State Farm for $14,000, which was well within the limits of the tortfeasors' insurance policy with State Farm. (R. 53, 77)

No lawsuit was ever filed by defendant's attorney and the settlement of December 22, 1977 with State Farm was accomplished out of court. (R. 53)

On January 6, 1978, defendant's attorney first advised plaintiff of defendant's settlement with State Farm. Defendant's attorney further advised plaintiff that the No-Fault payments, which were being paid out of the $14,000 settlement, were subject to a one-third contingent fee, totalling $928.27. (R. 53, 78-79) Prior to this letter of January 6, 1978, neither defendant nor her attorney had made demands or requests for attorneys' fees regarding the No-Fault interests due plaintiff from State Farm, and no agreement had been entered into between plaintiff and defendant regarding attorneys' fees. (R.54) A one-third contingent fee arrangement had been entered into between defendant and her attorney. (R. 54)

State Farm Insurance Company sent a draft to plaintiff for the No-Fault benefits paid to defendant, but the draft was made payable to both plaintiff and defendant's attorney. Defendant's attorney refused to endorse the draft unless his alleged one-third contingent fee therein was put in trust, awaiting the outcome of this action.

Plaintiff denied responsibility for any attorneys' fees or costs relative to the No-Fault reimbursement from State Farm (R. 80-81) and brought this action for a declaration that it was not responsible for such fees and for a release of any claim by defendant to those funds. (R. 1-3) Defendant answered and by way of counterclaim, asserted a right to attorneys' fees and costs of $928.27. (R. 9-10) Motions for Summary Judgment based upon these facts, were filed by both parties and, after a hearing thereon without a transcript, the Honorable G. Hal Taylor, Judge, entered an Order granting plaintiff's Motion for Summary Judgment and denying defendant's corresponding Motion.

ARGUMENT

POINT I.

UTAH'S NO-FAULT INSURANCE ACT WAS ENACTED TO STABILIZE INSURANCE COSTS BY PROVIDING BINDING ARBITRATION BETWEEN INSURANCE COMPANIES ON THE ISSUE OF REIMBURSEMENT FOR PAID NO-FAULT BENEFITS.

From the stipulated facts, it appears clear that defendant's attorney did not represent plaintiff. Defendant's attorney never requested, in advance, the right to represent plaintiff Guaranty National on its no-fault claim, and no such permission was ever given to defendant's attorney by plaintiff. Plaintiff first became aware of the attorney's representation of their insured by way of letter, dated February 22, 1977, from State Farm. It was eight months prior to that time when plaintiff notified State Farm of its claim for reimbursement for No-Fault benefits as provided under Utah's No-Fault Insurance Act.

To allow defendant's attorney to unilaterally appoint himself as attorney for plaintiff, and to then demand a one-third contingent fee in the No-Fault recovery, is a violation of the public policy declared by the Utah Legislature in enacting Utah's No-Fault Insurance Act.

The Utah No-Fault statute, by recognizing the rights of arbitration between insurers, makes it clear that the Legislature wants to stabilize insurance costs by reducing unnecessary attorneys' fees and costs.

Section 31-41-2, Utah Code Annotated (1953), as amended, provides:

> 31-41-2. Purpose of act.
>
> * * *
>
> The intention of the legislature is hereby to possibly stabilize, if not effectuate certain savings in, the rising costs of automobile accident insurance and to effectuate a more

efficient, equitable method of handling the greater bulk of the personal injury claims that arise out of automobile accidents, these being those not involving great amounts of damages. (Emphasis added.)

Section 31-41-11 provides:

31-41-11. Subrogation rights and arbitration between insurers. -- (1) Every insurer authorized to write the insurance required by this act shall agree as a condition to being allowed to continue to write insurance in the state of Utah:

(a) That where its insured is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under this act have been paid by another insurer, including the state insurance fund, it will reimburse such other insurer for the payment of such benefits, but not in excess of the amount of damages so recoverable, and

(b) That the issue of liability for such reimbursement and the amount of same shall be decided by mandatory binding arbitration between the insurers. (Emphasis added.)

If it is intended that insurance costs be stabilized, it is not reasonable to pay attorneys' fees and costs that are unnecessary. Defendant's attorney is claiming a fee for services that plaintiff did not want and did not ask him to perform. He is claiming costs that plaintiff did not incur, did not authorize and for expenses that served no purpose to Guaranty National. If an insurance company is required to pay attorneys' fees and costs to plaintiffs for bringing actions, when there is binding arbitration provided by statute, insurance costs will increase rather than stabilize or decrease as was intended by the drafters of Utah's No-Fault Act.

In State Farm Mutual Insurance Co. v. Farmers Insurance Exchange, 22 Utah2d 183, 450 P.2d 458 (1969), this Court upheld the right of one insurance company to recover from another for property damage and medical costs. The Court said that subrogation springs from equity, concluding that one who has been reimbursed for a specific loss should not be entitled to a second reimbursement. In a later case, State Farm Mutual Insurance Company v. Farmers Insurance Exchange, 27 Utah2d 166, 493 P.2d 1002 (1972), this Court held that, where one company had given notice to another of its subrogation claim, it was subrogated to recover medical expenses paid.

The No-Fault statute, by recognizing the rights of arbitration between insurers, intended to avoid unwanted and unnecessary attorneys' fees and costs.

Defendant's attorney's refusal to endorse State Farm's draft to plaintiff is contrary to the policy behind Utah's No-Fault Insurance Act, and interfered with Guaranty National's contractual subrogation rights.

As noted above in Section 31-41-11, Utah Code Annotated (1953), as amended, the issue of liability for No-Fault reimbursements and the amount thereof is determined by arbitration between the insurers. By that statute, plaintiff Guaranty National is prohibited from filing suit for No-Fault benefits, unlike the usual insurance subrogation cases. For that reason, the cases cited by defendant in Point I of her brief are not applicable to this case involving No-Fault claims.

In Point II of her brief, defendant has argued her rights to attorneys' fees by analogy from the Workmen's Compensation Laws, which are clearly not analogous. There is no arbitration provision in the Workmen's Compensation statute. Furthermore, Workmen's Compensation statute, Section 35-1-62(2) Utah Code Annotated (1953), as amended, specifically has provided for attorneys' fees. These critical differences preclude any meaningful parallels between the Workmen's Compensation and No-Fault laws.

In addition, defendant's arguments regarding the unconstitutionality of the arbitration statute for No-Fault benefits are not properly before this Court and are without merit. Section 31-41-11, Utah Code Annotated (1953) (Arbitration) applies only to insurance companies. No insurance company is before this Court raising any objections to that statute. Insurance companies universally are in favor of the statute because it enhances the amount of subrogation recoveries, reduces the costs of court and attorneys' fees, and avoids delays in the processing of claims between insurance companies.

Most insurance companies, nationwide, engage in arbitration of the standard automobile and other subrogation claims under an Inter-Company Arbitration Compact, which has been successful for the very reasons cited above.

State Farm is willing and has agreed to repay the plaintiff the full amount of its No-Fault claim, as evidenced by the draft issued by State Farm. The defendant's attorney, who is not a party to this litigation, is the one blocking this payment based upon a claim for a one-third contingent fee from plaintiff which he did not represent.

The claim in Appellant's Brief, Point II, that the rule against splitting a cause of action renders the arbitration section of the statute unconstitutional, is erroneous.

The rule against splitting a cause of action is based solely on the desire of the courts to prohibit a multiplicity of lawsuits. See Raymer v. Hi-Line Transport, Inc., 50 Utah 2d 427, 394 P.2d 383.

Obviously, the above statute does not permit the filing of a separate suit by the subrogation insurer, but does provide for a separate arbitration hearing, if that becomes necessary. The defendant is not being compelled to arbitrate her claims under the statute.

Furthermore, there is nothing in the statute that prohibits the injured party from including all of her special damages in her lawsuit. If she does, and a judgment is awarded for the full amount of her special damages, including her insurance company's subrogation interest, the amount of that interest is deducted by the trial judge from the judgment, for the very reason that she is not entitled to a double recovery or unjust enrichment.

The insured's (injured party's) constitutional rights to due process, or any other rights, are not affected in any way. She has received her No-Fault benefits, which are payments made in advance for her injuries. By the reduction of the judgment to the extent of her advance payments, she has not been prejudiced, or her rights affected, in any way.

Should the injured party (insured) and her attorney elect not to include the amount of the advance payments in her lawsuit, she is certainly not splitting a cause of action, and her insurance carrier, by statute, may then arbitrate their subrogation claim, if necessary.

POINT II.

DEFENDANT MORRIS HAS BREACHED THE SUBROGATION CLAUSE OF HER INSURANCE CONTRACT.

Under plaintiff's insurance policy, No-Fault benefits are provided through endorsement 43 PIP. As regards subrogation, this endorsement provides:

> d. Subrogation. In the event of any payment under this coverage, the Company is subrogated to the rights of the person

to whom or for whose benefit such payments were made, to the extent of such payments, and such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights.

e. Reimbursement and Trust Agreement. In the event of any payment to any person under this coverage:

1. the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made; and the Company shall have a lien to the extent of such payment, notice of which may be given to the person or organization causing such bodily injury, his agent, his insurer or a court having jurisdiction in the matter;

2. such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against such other person or organization because of such bodily injury;

3. such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

4. such person shall execute and deliver to the Company instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

Under this insurance contract, defendant agreed to execute and deliver instruments and papers and to do whatever else was necessary to secure plaintiff's subrogation rights, and not to do anything to prejudice its rights. State Farm had expressed a willingness to honor the plaintiff's No-Fault reimbursement request after the resolution of the liability claim.

Following the settlement of the liability claim, a $2,787.61 draft was, in fact, mailed by State Farm directly to plaintiff to reimburse it for the PIP payments to defendant. State Farm recognized the right of plaintiff to be reimbursed in this amount. Defendant's attorney rendered no service in obtaining this sum. The draft was mailed to plaintiff and the only requirement as far as State Farm was concerned was that defendant's attorney endorse it.

Utah recognizes both common law and written policy provisions allowing subrogation to the insurance company.

In Johanson v. Cudahy Packing Co., 107 Utah 114, 152 P.2d 98 (1944), the court held an insurer was subrogated to the rights of the insured against the person whose wrongful acts or omissions had caused the injury and that the suit could be brought in the name of the insured, rather than the name of the insurance company. State Farm Mutual Insurance Company v. Farmers Insurance Exchange, supra. (1969), State Farm Mutual Insurance Company v. Farmers Insurance Exchange, supra. (1972), and Transamerica Insurance Company v. Barnes, 29 Utah 2d 101, 505 P.2d 783 (1972), support Guaranty National's right to the subrogation recovery.

Section 31-41-6 that describes the benefits one is entitled to receive under the No-Fault Act does not include a benefit for attorneys' fees and expenses in pursuing a claim against a third person. Defendant Morris, by and through her attorney, is trying to compel plaintiff to pay a benefit outside of the scope of PIP coverage, and in so doing, has breached the subrogation clauses of her insurance contract.

POINT III.

THE DOCTRINE OF UNJUST ENRICHMENT IS NOT APPLICABLE IN THIS CASE, BUT EVEN ASSUMING PLAINTIFF IS OBLIGATED TO PAY THE DEFENDANT ATTORNEYS' FEES, UNDER THE DOCTRINE OF UNJUST ENRICHMENT, ONLY THE REASONABLE VALUE OF SERVICES CAN BE RECOVERED.

The attorney for the defendant maintains that he should be compensated a one-third contingent fee of the plaintiff's No-Fault recovery inasmuch as he had a one-third contingent fee agreement with the defendant as to her recovery. A one-third contingent fee to be deducted from the No-Fault reimbursement cannot be supported in this case, even if the doctrine of unjust enrichment were found to be applicable.

In this case, no court costs were incurred, inasmuch as a lawsuit was never initiated. Defendant's attorneys' fees for services were obviously incurred for the sole purpose of recovering general and other damages not compensated by No-Fault payments from plaintiff.

Defendant's attorney, when he first accepted her case, either knew or should have known about the No-Fault statute, and the subrogation requirements, and he should not now be permitted to ignore the statute and to recover a fee from the plaintiff who did not retain him.

In 7 C.J.S., Attorney -- Client, Section 175, p. 1041:

> No one can legally claim compensation for incidental benefits and advantages to one, flowing to him on account of services rendered to another by whom the Attorney may have been employed or . . . for services voluntarily rendered.

See also, Seal v. Lefevre, 22 Utah2d 125, 449 P.2d 651 (1969), where this Court held that the individual cattlemen were not bound to pay a fee to an attorney employed by the Cattlemen's Association.

In Baugh v. Darley, 112 Utah 1, 184 P.2d 335 (1947), a plaintiff was seeking to recover the value of services in procuring a purchaser for land. In discussing the doctrine of unjust enrichment, Justice Wolfe stated, at 337.

> Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. (Citations omitted.) The benefit may be on interest in money, land, chattels, or choses in action; beneficial services conferred, satisfaction of a debt or duty owed by him; or anything which adds to his security or advantage.

The remedy where unjust enrichment has occurred was defined at 33

> . . . in an action for unjust enrichment, in those cases where there is a proper equitable basis for the same, the measure of damages, by the great weight of authority is the reasonable value of the services rendered.

In the present case, an arbitrary one-third contingent fee is not the reasonable value of services rendered and evidence would have to be introduced on the reasonable time and nature of those services.

The doctrine of unjust enrichment is not applicable in this case for reasons long recognized by this Court. In Baugh, supra., Justice Wolfe stated at 337:

> The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor. Restatement of Restitution, Sec. 1, comment c. Services officiously or gratuitously furnished are not recoverable. Restatement of Restitution, Sec. 2. Nor are services performed by the plaintiff for his own advantage, and from which the defendant benefits incidentally, recoverable . See Restatement of Restitution, Sec. 40, comment c; and Sec. 41 (a) (i).
>
> * * *
>
> Generally, unless such services enhance or benefit the property of the defendant or otherwise confer on him a direct benefit, they do not form the basis of a contract imposed by law because there is not 'unjust enrichment' as that term is used in law. Where such services operate to confer a direct benefit upon the defendant, they may be recoverable.
>
> * * *

> The most that can be contended for plaintiff's efforts is that they made known to a willing purchaser the fact that the defendant's land was available for purchase at a certain price. This benefit, if such it was, was at best only a mere incident to the plaintiff's efforts to enrich himself. It did not increase the intrinsic value of the land. It did not give the defendant any legal rights which he did not previously have. It did not increase his estate, nor give him a position of greater security. It did not remove any legal liability.
>
> * * *
>
> We do not think that plaintiff conferred a 'benefit' upon the defendant in the sense in which that term is used in the law of unjust enrichment. (Emphasis added.)

Similarly, in Fowler v. Taylor, 554 P.2d 205 (Utah 1976), this Court held that a real estate broker was not entitled to a fee under the theory of unjust enrichment. The Court cited Baugh, supra., with approval, stating:

> The fact that a person benefits another is not itself sufficient to require the other to make restitution. Also, not recoverable are services officiously or gratuitously furnished; services performed by the plaintiff, for his own advantage, and from which defendant benefits incidentally.

In the present case, the defendant provided services which were not needed or wanted by the plaintiff. The plaintiff's remedy was through binding arbitration as between insurance companies as set forth in Section 31-41-11, Utah Code Annotated (1953), as amended. State Farm Insurance Company, the carrier for the negligent third party, had acknowledged the plaintiff's rights to subrogation and only refused to pay until the liability claim had been resolved.

Under the Baugh and Fowler decisions cited above, defendant's attorney cannot now claim compensation from plaintiff for services performed for the defendant's own advantage and from which plaintiff benefited only incidentally, if at all.

CONCLUSION

The lower court correctly held that defendant's attorney is not entitled to attorneys' fees with regard to the No-Fault reimbursement from State Farm to plaintiff.

This ruling is consistent with the purpose and public policy of the Utah Legislature in passing Utah's No-Fault Act; that is, to "stabilize" and effectuate certain savings "in the rising costs of automobile accident insurance" and to "effectuate a more efficient, equitable method of handling the great bulk of the personal injury claims that are out of automobile accidents."

The doctrine of unjust enrichment is not applicable in this case where no court costs were incurred, no lawsuit was ever filed, and where the defendant's attorney negotiated settlement for the defendant's own advantage, and did not enhance or benefit plaintiff's ability to recover the No-Fault sums directly or by arbitration from State Farm.

DATED this 15 day of May, 1979.

Respectfully submitted,

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CERTIFICATE OF DELIVERY

I certify that I hand-delivered two true and correct copies of the foregoing Respondent's Brief to Kent M. Kasting, Attorney for Appellant, 1000 Boston Building, Salt Lake City, Utah 84111, this 15 day of May, 1979.